

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|---------------------------|---|-----------------------|
| _____ |) | |
| WALDIR DACOSTA., |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. NO. 05-11063-RGS |
| V. |) | |
| |) | |
| MICHAEL CHERTOFF, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, defendants Michael Chertoff, Secretary, U.S. Department of Homeland Security; Eduardo Aguirre, Jr., Director, U.S. Citizenship and Immigration Services; and Denis Riordan, Boston District Director, U.S. Citizenship and Immigration Services; and Robert B. Muller, Federal Bureau of Investigation hereby moves to dismiss this action for lack of subject matter jurisdiction. In the alternative, pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants move for summary judgment. The reasons for the foregoing motion are set forth in the accompanying

Memorandum of Law.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Michael Sady

MICHAEL SADY
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United States Attorney's Office
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Dated: 10/31/05

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), I certify that, on October 31, 2005, I placed a telephone call to the office of plaintiff's counsel, Susan E. Zak, Esq., to confer regarding this motion, and left a telephone message for her that I was calling to confer regarding this motion.

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/s/ Michael Sady

MICHAEL SADY
Assistant U.S. Attorney